

आयकरअपीलीयअधिकरण, 'ए' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1091/Mds/2017

निर्धारण वर्ष/Assessment Years : 2013-14

Coimbatore Hitech Infrastructure Private
Limited,
No. 365, Thudkylur Road,
Saravanampatti,
Coimbatore – 641 035.

Deputy Commissioner of Income Tax,
Vs. Corporate Circle -2,
Coimbatore – 641 018.

[PAN: AACCC 5201G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. V. Sreenivasan, JCIT

सुनवाईकीतारीख/Date of Hearing

: 28.06.2017

घोषणाकीतारीख/Date of Pronouncement

: 12.09.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the
Commissioner of Income Tax (Appeals)-1, Coimbatore in ITA No. 30/16-17 dated
27.02.2017.

2. Coimbatore Hitech Infrastructure Private Limited, the assessee, is in the business of developing sector specific special economic zone, governed by SEZ Act. In the assessment made for assessment year 2013-14, the AO found that the assessee had made an investment in shares at Rs. 26,60,94,000/-. He required the assessee to explain as to why the provisions of section 14A r.w.r. 8D should not be invoked. The assessee relying on the decisions of Godrej Boyce Mfg. Co. Ltd. vs DCIT (328 ITR 81), Maxopp Investments Ltd. vs. CIT (347 ITR 272), CIT vs HDFC Bank (366 ITR 502), CIT vs Hero Cycles (323 ITR 518), CIT vs Glenmark Pharmaceuticals Ltd. (351 ITR 359), Cheminvest Ltd. vs CIT (378 ITR 33), CIT vs Om Prakash Khaitan (376 ITR 390) and CIT vs Holcim India Private Ltd. (ITA No. 486/2014 & ITA No. 299/2014) submitted that the provisions of section 14A r.w.r. 8D are not attracted in its case. However, the AO held that in order to make such investments and to receive dividends in future, definitely in all probability and business prudence, the assessee requires expertise in advising, managerial supervision, persons/personnel who are well skilled and trained in such investments, continuous follow up and services of those personnel are essential. These personnel apart from their main job for which they are recruited will perform the additional role of advising the assessee and periodical review in making wise investments. The expenditure incurred towards these investments and other related charges needs to be notionally disallowed. Hence, by invoking the provisions of section 14A of the Act, Rule 8D of the I.T. Rules, 1962 r.w. CBDT Circular No. 5 of 2014 dated 11.02.2014, the

AO disallowed Rs. 13,30,470/-. Aggrieved against that assessment order, the assessee filed an appeal before the CIT(A), who confirmed the disallowance.

3. Against the appeal order of the CIT(A), the assessee filed this appeal pleading , inter alia, that the assessee has not actually earned any dividend income and therefore no question of the assessee actually debiting any portion of expenditure either in earning the dividend income or expenditure attributable to exempted investments. The learned CIT(A) ought to have appreciated the fact that each and every item of expenditure debited in the profit and loss account wholly and exclusively in earning the business income only and actually no expenditure whatever, has been debited in profit and loss account which could be relatable to exempted investment in shares. The Id. CIT(A) has erred in agreeing with the Assessing Officer on the assumption that the assessee might have incurred expenditure in relation to the investment in share that may yield exempted income in future and that on estimation a portion of the Administrative expenditure attributable to exempted investment is to be disallowed following the guidelines given by the Rule 8D of the I.T. Rules. The learned Commissioner of Income-tax (Appeals) ought to have find (sic) out that the binding decision of the Madras High Court in the case of Redington (India) vs. ACIT (TCA No. 520 of 2016 dated 23.12.2016) clearly supports its stand and the applying the ratio of this decision, the CIT (A) ought not to have confirmed the disallowance, since the facts and circumstances of its case are clearly similar to the case decided by the Hon'ble Madras High Court. It is pertinent to mention that in its case for

assessment year 2014-15, the learned CIT(A) in his order in ITA No. 199/16-17 dt 31.03.2017 has deleted similar disallowance following the favourable decision of the Madras High Court. Hence, it is clear that the appellate order passed by the learned CIT (A) for this assessment year on similar disallowance is contrary to the judicial decision etc.

4. The AR submitted that the assessee has not earned any exempted income and hence the disallowance made u/s. 14A is not sustainable on the basis of the Jurisdictional High Court decisions in the case of M/s. Redington (India) Ltd. vs Addl CIT in TCA No. 520 of 2016, dated 23.12.2016 & CIT, Central 1, Chennai vs M/s. Chettinad Logistics Pvt. Ltd. in TCA No. 24 of 2017, dated 13.03.2017. Per contra, the DR relied on the order of the CIT(A).

5. We heard the rival submissions and gone through the copies of the judgements relied on by the AR. The question arose in the case of CIT, Central 1, Chennai vs M/s. Chettinad Logistics Pvt. Ltd in TCA No. 24 of 2017, dated 13.03.2017 is extracted as under:

"The Only issue, which arose for consideration, before the Tribunal, was, whether an addition made in the sum of Rs. 86,62,748/- qua, the Assessee, by invoking the provisions of section 14A of the Act, read with, Rule 8D of the Income Tax Rules, 1962 (in short, the Rules) was valid."

5.1 The operative portion of the judgment is extracted as under:

" 16. To our minds, questions of law, which could have arisen are already covered by the judgement of a Co-ordinate Bench of this Court rendered in M/s. Redington (India) Limited case."

5.2 The Hon'ble High Court of Madras in the case of Redington (India) Ltd. Vs. Addl CIT in TCA No. 520 of 2016 dated 23.12.2016 held that "in conclusion, we are of the view that the provisions of section 14A r.w.r. 8D of the Rules cannot be made applicable in a vacuum i.e. in the absence of exempt income." Since in this case, there is no exempt income, applying the ratios in the above judgements, the impugned addition is deleted.

6. In the result, the assessee's appeal is allowed.

Order pronounced on Tuesday, the 12th day of September, 2017 at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 12th September, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF